

Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice

Date: 5 June 2019

Public Authority: Mid and East Antrim Borough Council
Address: The Braid
1 – 29 Bridge Street
Ballymena
BT43 5EJ

Decision (including any steps ordered)

1. In two separate requests the complainant has requested information associated with particular meetings, dates and correspondence. Mid and East Antrim Borough Council ('the Council') has categorised both requests as manifestly unreasonable under regulation 12(4)(b) of the EIR.
2. The Commissioner's decision is as follows:
 - The complainant's requests are manifestly unreasonable under regulation 12(4)(b) and the Council is not obliged to release the requested information. The public interest favours maintaining the exception.
 - The Council has not complied with regulation 11(4) with regard to Request 2 as it did not provide a clear and discreet internal review decision within 40 working days of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- In order to comply with regulation 11(4), communicate to the complainant the internal review decision reference FOI/330/1718 which it has now confirmed also covers FOI/318/1718.
4. The Council must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

Request 1 – FER0710551 [Council reference FOI/330/1718]

5. On 12 October 2017, the complainant wrote to the Council and requested information in the following terms:
- "Please provide to me a list of all meetings between Infrastrata/Infrastrata's agents and:*
- 1. Ballymena Borough Council councillors/employees*
 - 2. Mid and East Antrim Borough Council councillors/employees*
- For each meeting please provide date, time, location, attendees, notes/minutes"*
6. The Council responded on 8 November 2017. It handled the request under the EIR and categorised the request as manifestly unreasonable under regulation 12(4)(b).
7. The complainant requested an internal review on 9 November 2017. The Council has confirmed that it completed an internal review (reference FOI/330/1718), a copy of which it has provided to the Commissioner. The review is undated but the Council has acknowledged that it did not conduct the internal review in a timely manner. The Commissioner understands that the Council provided the complainant with a copy of this review response and that it was provided after Christmas 2017. The review response is discussed further below.

Request 2 – FER0823159 [Council reference FOI/318/1718]

8. On 4 November 2017, the complainant wrote to the Council and requested information in the following terms:
- "1. On what date did the Council ask for legal advice on the Boroughs report and on what date did the Council receive the legal advice?"*

- 2. Please provide to me a copy of an email sent by Cllr Andrew Wilson to Paul Duffy on 25 January 2016 with the subject line "Exploratory drilling @ Woodburn" and all responses sent to Cllr Wilson resulting from this email.*
- 3. At the 4 February 2016 Planning Committee meeting, Paul Duffy said he had written to the Department (DoE) to request that all information in relation to the Waste Management Plan be transferred to Mid and East Council for consideration. Please provide a copy of this letter and all responses from the Department.*
- 4. In addition to the 4 February 2016 letters and responses in item 3, please provide all other correspondence between Mid and East Borough Council and DoE Strategic Planning for the period 1 January 2016 to 29 February 2016"*
9. The Council responded on 8 November 2017. It handled the request under the EIR and categorised the request as manifestly unreasonable under regulation 12(4)(b).
10. The complainant requested an internal review on 9 November 2017. The Council has told the Commissioner that it completed an internal review at the same time as the review it completed for a separate request. In its submission, the Council has given the reference number of this separate request as FOI/330/1819. The reference on the review response that it has provided to the Commissioner, and which is referred to above, is FOI/330/1718 ie Request 1. The Commissioner understands that the review that the Council has provided to her was a review of its responses to both the requests that are the subject of this notice.
11. The Council has explained that due to the number of requests and reviews being undertaken at that time, associated with the complainant, the internal review did not specifically state that this particular request was included as well. The Council has confirmed that the decision making in respect of both requests is the same.
12. In correspondence to her, the complainant has acknowledged that because a lengthy correspondence with the Council was ongoing at that time, the review of this response may have been overlooked.

Scope of the case

13. The complainant contacted the Commissioner on 10 November 2017 to complain about the way her requests for information had been handled.

She is dissatisfied with the Council's categorisation of her requests as manifestly unreasonable and its handling of the internal review process.

14. The Commissioner has first considered whether the information that has been requested can be categorised as environmental information that should be handled under the EIR.
15. The Commissioner's investigation has then focussed on whether the complainant's requests are manifestly unreasonable under regulation 12(4)(b) of the EIR or, if appropriate, the equivalent FOIA exemption.
16. She has also been prepared to consider the Council's handling of the internal review process and whether it complied with regulation 11 of the EIR in that regard.

Reasons for decision

Is the requested information environmental information?

17. Information is 'environmental information' and must be considered for disclosure under the terms of the EIR rather than the FOIA if it meets the definition set out in regulation 2(1)(a) to 2(1)(f) of the EIR.
18. Regulation 2(1)(a) defines environmental information as information that concerns the state of the elements of the environment, including: air and atmosphere, soil, landscape and natural sites and biological diversity. Regulation 2(1)(b) gives a definition of environmental information as factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).
19. Regulation 2(1)(c) defines environmental information as information that concerns measures (including administrative measures) such as policies, legislation, plans, programmes and activities affecting or likely to affect the elements referred to in (a) and (b) as well as measures or activities designed to protect those elements.
20. In Request 1 the complainant has requested a list of meetings and the dates, locations, attendees, notes and minutes of these meetings. In Request 2 the complainant has requested dates, Council correspondence about InfraStrata's drilling operation at Woodburn Forest, the Council's correspondence with Department for the Environment about a Waste Management Plan and more generally.

21. The Commissioner understands that all this information relates to a controversial operation to drill for oil in Woodburn Forest, County Antrim. As such, the Commissioner is satisfied that the information can be categorised as environmental information under regulation 2(1) of the EIR. This includes the list, dates, locations and attendees etc that have been requested. This is because the Commissioner considers this information is inextricably linked to the matter of the drilling operation at Woodburn Forest.

Regulation 12(4)(b) – manifestly unreasonable request

22. Regulation 12(4)(b) says that a public authority may refuse to disclose information to the extent that the request for information is 'manifestly unreasonable'. This exception can be used when a request is vexatious or when the cost of complying with a request would be too great.
23. The Commissioner considers that the inclusion of 'manifestly' in regulation 12(4)(b) indicates Parliament's intention that, for information to be withheld under the exception, the information request must meet a more stringent test than simply being 'unreasonable'. 'Manifestly' means that there must be an obvious or tangible quality to the unreasonableness of complying with the request.
24. With regard to vexatiousness, in line with her published guidance on vexatious requests, the Commissioner considers whether the request itself is manifestly unreasonable rather than the individual submitting it. Sometimes, it will be patently obvious that a request is manifestly unreasonable. In cases where it is not so clear cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
25. The Commissioner recognises that the requests were submitted towards the end of 2017. In coming to a decision in these cases, she has considered the situation as it was at that point, not as it is now.
26. In its submissions for FER0710551 and FER0823159, the Council has said that in light of the complainant's activity and conduct with the Council, it considered these requests to cause and sustain an extended period and level of unjustified disruption. It says that the Council had previously sought to comply with requests in relation to the matter of drilling in Woodburn Forest, given the public interest in this issue. The case (ie that the Council granted development rights to drill in the Forest) was fully explored and heard in a judicial review case with a high

court judgement handed down. The Council says that despite this the complainant persisted in submitting requests in an attempt to reopen or prolong the matter in order to maximise the disruptive impact on the Council and its resources. Throughout this time, the complainant submitted numerous similar, identical or repeated correspondence about the same issue in order to frustrate the Council's due process for managing the requests.

27. In determining whether the requests were manifestly unreasonable due to the unjustified level of disruption, irritation or distress, the Council says it considered the following:
28. **Assessing purpose and value** - the Council says it does not believe there is any purpose or value behind the requests, both in respect of the individual complainant or the wider public. The issues in relation to this matter have been fully investigated and explored as part of the judicial review case. The judgement of which was in the favour and interests of the complainant i.e. there will be no drilling at Woodburn Forest. Through the various requests (including the request for internal review), the Council considers it is evident that the complainant wishes to argue points rather than seek information. In the Council's view the complainant raises repeat issues and continues to allege wrongdoing by the Council without grounds and in spite of evidence to the contrary as determined by the judicial review judgement.
29. **Considering whether the purpose and value justifies the impact on the public authority** - given that the matter has been heard and determined by judicial review, the Council says it does not consider that there is any continuing purpose or value that justifies the complainant's "*ongoing abusive and disruptive behaviour*". Prior to the judicial review case concluding, the Council said it interpreted the balance of interests in favour of the complainant and sought to absorb the significant burden on resources associated with the requests. However, with the conclusion of the legal case, any wider public value or interest dissipated, yet the Council continued to receive information requests from the complainant.
30. **Taking into account context and history** - the Council contends that the Commissioner must take into account the context and history, both in terms of the subject matter and the complainant. It says the complainant has placed a significant strain on the Council's resources by submitting numerous and frequent requests, with this request, adding to the overall burden. The Council also says it has reason to believe that the complainant has coordinated a campaign against the Council and coordinated numerous similar or identical requests as theirs, from other individuals. The approach adopted the complainant has led the Council to believe that there will be no satisfaction or conclusion to the requests on this matter.

31. The Council has told the Commissioner that, given the challenges in dealing with the volume of requests with limited resources, it recognises that this had an impact on its response times, efficiencies and processes. However, in good faith, the Council has sought to provide what information it could under difficult circumstances. The Council has noted that it has continued to receive and process information requests from the complainant on other matters.
32. The Council has referred to some of the complainant's correspondence as being 'abusive and disruptive'. It has not provided the Commissioner with any evidence of any 'abusive' correspondence from the complainant and so she has not considered this aspect in her consideration of whether the requests are manifestly unreasonable.
33. Likewise, the Council has alluded to an orchestrated campaign targeting the Council over the matter of the drilling operation at Woodburn Forest, but has not provided compelling evidence to support this. The Commissioner has noted that organised opposition to the drilling operation existed. She has, however, focussed on the pattern and volume of requests that the complainant submitted to the Council and whether, at the point of receiving the requests that are the subject of this notice, continuing to comply with the requests was a justified burden.
34. The Council has provided the Commissioner with a table listing the requests it received from the complainant from January 2016 to September 2018. From the period between 11 January 2016 and 2 October 2017 (the date of Request 1) the complainant submitted 21 requests. She submitted a further series of requests in the one month period between the date of Request 1 and Request 2, including submitting more than one request on one day. All these request broadly concerned Woodburn Forest.
35. In the Commissioner's view this is a very high number of requests to submit. She notes that, with more than one request often being submitted on the same day, or a short time after an earlier request, complying with the requests would have caused a considerable burden to the Council. Despite the burden involved, the requests would not be manifestly unreasonable if the burden was justified.
36. The drilling operation in Woodburn Forest ceased in June 2016, more than a year before the complainant submitted the current requests. In addition, and as the Council has noted, the Council's decision to grant InfraStrata permitted development rights for an exploratory oil drill in the Forest had been the subject of a judicial review. The judicial review had concluded in August 2017; again, before the current requests were submitted. The judge noted that, at that point, there was no

development taking place at the site, which had been restored to its original condition. The Council has also told the Commissioner that no future drilling is planned for Woodburn Forest.

37. The complainant's requests for information may well have had a genuine purpose when she began to submit them in January 2016 when the drilling operation was in progress. However, in the Commissioner's view the requests lost their value as they rose in number despite the drilling ceasing and the related judicial review. The matter that was a concern to the complainant – drilling in Woodburn Forest – had concluded. That the requests continued at the same rate – and continued to be submitted after the date of the current two requests and into 2018 – might suggest a deliberate attempt to divert and disrupt the Council. The Commissioner notes that the complainant has not provided the Commissioner with any arguments to support a position that her requests are not manifestly unreasonable or to support a position that the burden that releasing the information would cause to the Council is justified.
38. In the absence of such arguments and having considered the Council's submissions and all the circumstances of these cases, the Commissioner is of the view on this occasion that, at the time of these requests, the burden to the Council of continuing to comply with the complainant's requests would have been disproportionate to the requests' value. The Commissioner therefore considers that the complainant's requests can be categorised as manifestly unreasonable and that, at the time they were submitted, the Council could rely on regulation 12(4)(b) to refuse to disclose the requested information. She has gone on to consider the public interest arguments with regard to the requests.

Regulation 12(1)(b) - public interest considerations

Public interest arguments in favour of disclosing the information

39. Neither the complainant nor the Council has provided any public interest arguments to support the requested information being released. In the absence of these, the Commissioner has considered the general public interest in public authorities demonstrating that they are open and transparent. The EIR also contain an inherent presumption in favour of disclosure.

Public interest arguments in favour of maintaining the exception

40. The Council says it has determined that the public interest in disclosure was not met in this case. It has received over 70 access to information requests in relation to Woodburn Forest with costs estimated in excess of £7,000 to manage these requests. The table of requests it provided to

the Commissioner demonstrates, the Council says, that the complainant placed a significant and disproportionate burden on the Council when attempting to satisfy the multiple and repeated requests and complaints.

41. The Council says it has reason to believe that the complainant was involved in a coordinated 'Stop the Drill' campaign that encouraged campaigners to submit multiple identical/similar requests to the Council. This led to considerable disruption in handling the information requests workload. When compared with counterparts in England and Wales, the Council says that Mid and East Antrim Council is a relatively small council with limited resources (two officers and one administrative support) in respects of information requests.
42. Finally, the Council says that following: the closure of the judicial review (prior to this request being received); the release of all possible information held by Council under previous requests; and with no future drilling planned, there was little, if any, public interest to be served by the requests.

Balance of the public interest

43. The Commissioner appreciates that the drilling operation in Woodburn Forest was controversial and the matter was of considerable local public interest. However, she is satisfied that the related information the Council released in response to the complainant's earlier request and the fact that the Council's decision with regard to Woodburn Forest had been subject to judicial review satisfy the public interest in this case. In addition, at the time of the request, the drilling operation had ceased 16 months earlier and no further drilling was planned. In the Commissioner's view the public interest was therefore better served by the Council being able to focus on its wider day to day business without being further distracted by a matter that had concluded.

Regulation 11 – representations and reconsideration

44. Regulation 11(1) says that an applicant may make representations to a public authority in relation to the applicant's request for environmental information if it appears to the applicant that the authority has failed to comply with a requirement of the Regulations in relation to the request.
45. Regulation 11(3) says that the public authority shall consider the representations and decide if it has complied with the requirement. Regulation 11(4) says the public authority shall notify the applicant of its decision as soon as possible and no later than 40 working days after the date of receipt of the representations.
46. With regard to Request 2, the complainant requested a review on 9 November 2017 and has told the Commissioner that she did not receive

a review response from the Council. The Council has now advised the Commissioner that the review it provided after Christmas 2017 for Request 1 (which the complainant also requested on 9 November 2017) also covered Request 2. In the Commissioner's view the complainant was not to know that, given that the only reference number on the review decision is the number for Request 1.

47. The complainant has told the Commissioner that she is not aware that she received a response to her correspondence of 9 November 2017. It is not clear to which of her two requests for a review submitted on 9 November 2017 the complainant is referring. And as has been mentioned, the complainant has acknowledged that because of the nature of her correspondence with the Council, it may have been overlooked.
48. The Council has now clarified that its review for Request 1 also covered Request 2. In response to a somewhat confused picture presented by the complainant and the Council, the Commissioner finds that the Council has not complied with regulation 11(4) with regard to Request 2 as it has not provided a clear and discreet review response within 40 working days of the request.

Right of appeal

49. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals
PO Box 9300
LEICESTER
LE1 8DJ

Tel: 0300 1234504
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
51. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Gemma Garvey
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